IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO.391 OF 2006
AND
C.M.P.NO.3006 OF 2006

1.Karuppaiah
2.Rao (set ex parte) .. Petitioners

Vs.

1.C.Natesan
2.C.Subbiah .. Respondents

This civil revision petition has been preferred under Article 227 of the Constitution of India against the fair and decreetal order, dated 12.12.2005 made in E.A.No.5089 of 2005 in E.P.No.1855 of 2002 in O.S.No.10175 of 1987 passed by the IX Assistant City Civil Judge, Chennai.

For Petitioners : Mr.M.Kumarasamy

For Respondents : Mr.K.V.Sundararajan

ORDER

An order of dismissal made by the IX Assistant Judge, City Civil Court, Chennai in E.A.No.5089 of 2005, seeking appointment of Advocate Commissioner in E.P.No.1855 of 2002 in O.S.No.10175 of 1987 is the subject matter of challenge in this revision petition.

2.The decree holders, who obtained decree in OS No.10175 of 1987 for recovery of possession, filed execution petition as referred to above. Pending execution, there was an obstruction and in order to remove the obstruction, he filed E.A.No.1059 of 2004. The Amin, who was deputed along with the warrant for delivery, went over and identified the property. At that time, there was an obstruction made and an application for removal was also made and the revision petitioner/obstructor has also appeared. Pending enquiry of that execution application, the instant application for appointment of an Advocate commissioner was made and that was dismissed. Under these circumstances, the obstructor has brought forth this civil revision petition before this court.

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3.The only contention raised by the learned counsel for the revision petitioner is that when the property was measured by Amin, he could not fix the property and a Wall has been raised by the petitioner. This was

actually situated within the property and therefore, the property has got to be measured properly and it could be done only by an Advocate Commissioner with the assistance of the Surveyor and then only, delivery could be effectively made. Under these circumstances, the order of the lower court is erroneous and it has got to be set aside.

4.Contrary to the above contentions, the learned counsel appearing for the respondents would submit that after E.P.No.1855 of 2002 for delivery of possession was made, the obstructor has purchased the property from the judgment debtor and raised obstruction, stating that he has raised a Wall. When the Amin was deputed along with the warrant, he went over, fixed and identified the property and there was no impediment felt to deliver the property. Under these circumstances, the vexatious instant application was filed to appoint the Advocate Commissioner. The lower court has found that it is not a fit case to entertain the application and hence, it has dismissed the same.

5.After careful consideration of the rival submissions made, the Court is of the considered opinion that the civil revision petition requires an order of dismissal. It was a suit for declaration and recovery of possession. There was a decree that was passed and the property to be delivered is also shown by way of sketch. It was put in execution. Now, the civil revision petitioner is the obstructor. It is brought to the notice that after passing the decree, the obstructor has purchased the property from the judgment debtor. Apart from that, there was no difficulty felt by Amin, who was deputed along with the warrant for delivery, to identify the property. At this juncture, the instant application was filed for appointment of an Advocate Commissioner. The lower court has rejected the same and rightly too. The only point urged before this court is that originally, what was asked for in the suit is to an extent of 185 square feet and the decree was granted to an extent of 40 square feet and therefore, there is discrepancy noticed and it has got to be answered. The Court is at loss to understand how the Advocate Commissioner, even if appointed by the lower court, could solve or find out the discrepancy and act accordingly. Hence, The revision petitioner is now permitted to raise the same before the lower court and the lower court is also directed to consider the same and see the property is delivered in accordance with the decree passed. Accordingly, this civil revision petition is disposed of. No costs. Consequently, connected CMP is closed.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vvk

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To

1. The IX Assistant Judge,
City Civil Court,
Chennai.

2. The Registrar,
City Civil Court,
Madras.

+ 1 CC To Mr.A.Ganesan, Advocate SR NO.33990

+ 1 CC To Mr.K.V.Sundararajan, Advocate SR NO.34263

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